IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 62 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

and

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMABHAI AMTHABHAI BHANGI

Versus

STATE OF GUJARAT

Appearance:

MR JATIN M BUDHBHATTI for Petitioner

MR SP DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

and

MISS JUSTICE R.M.DOSHIT

Date of decision: 11/04/2000

ORAL JUDGEMENT [Per M.S. Parikh, J.]

1. This appeal arises from the impugned judgment and order of conviction rendered on 29/12/1989 by the Ld. Addl. Sessions Judge, Mehsana in Sessions Case No. 37/1988.

2. The prosecution case in brief is : It was 12.00 noon on 24/12/1987 when two persons in the family came to be mercilessly killed by their close relation Dharmabhai, the accused herein. Ratnabhai his brother aged 20 years on the date of his evidence, Narbhabhai another brother who died at the time of aforesaid incident and Shantaben, accused's wife who also died at the time of the incident were all residing under the same roof. In the forenoon of the day of incident two brothers, the accused and the deceased, respectively Dharmabhai and Narbhabhai and witness Ratnabhai, the third brother were busy talking in the open space in front of the house and Shantaben wife of the accused was sitting on the Osari portion (platform portion) in front of the house. While Narbhabhai was sitting on the cot, Dharmabhai, the accused having in his hands a scythe (Dhariyu) gave a blow thereof on the neck of his brother Narbhabhai and then he rushed to his wife and gave a blow of the scythe on the neck of his wife Shantaben, who was in the process of running away from the place and reaching the house of Dungarbhai. Ratnabhai rushed to his cousin Manabhai's house in the vicinity and informed him about the incident with the result that Manabhai rushed to the place of incident. He saw accused Dharmabhai with the blood stained scythe in his hands standing nearby his house, Narbhabhai lying in bleeding condition on the cot in the open space in front of the house and Shantaben, wife of the accused lying nearby the house of Dungarbhai in bleeding condition. Manabhai snatched away the scythe from the hands of the accused, placed it nearby the cot on which Narbhabhai was lying in a bleeding condition and pushed the accused inside the house and locked him by closing the doors from outside. Before so locking the accused inside the house, Manabhai asked him why he so acted (as to have killed Narbhabhai and Shantaben) and the accused replied that he did so because he could not tolerate illicit relation between his brother Narbhabhai and his wife. Manabhai soon proceeded for filing complaint. Upon the receipt of information accordingly, the complaint was recorded by P.S.I. Pathibhai Jethabhai Chaudhari who was in charge of Kakosi Police Station at the relevant point of time and he went to the place of incident and found the dead bodies of Narbhabhai and Shantaben at the respective places as aforesaid. After recording the inquest Panchnamas he arranged for the two dead bodies being sent

for post mortem to the Medical Officer, Sidhpur. He also saw to the Panchnama of the scene of offence being made, earthern portion from the place of incident where blood stains were noticed being taken and sent for scientific examination and the hairs lying nearby the blood stained earthern portion being taken and sent for examination. One pocket diary and a ball pen lying nearby the place of incident and one note book lying in the blood stained portion were recovered and sent for examination. The turban (Faliyu) of the deceased Narbhabhai was also sent for examination. The Muddamal scythe (Dhariyu) stained with blood was seized and sent for scientific examination, and necessary Panchnamas in that respect were made. Having come to know that the complainant had locked the accused inside the house, he was brought out from the house, sent to the office of the village Panchayat and was arrested after necessary Panchnama regarding the trouser (Dhotiyu) put on by him was made while encircling the blood stains appearing on the said trouser and arranging to see that the accused changed his clothes so that the trouser was seized for its scientific examination. The accused was accordingly arrested and taken to the police station. Statements of the witnesses were then recorded and upon receipt of the post mortem report and scientific reports with regard to the Muddamal articles as aforesaid, charge-sheet was submitted. When the case was committed to the Sessions Court, the accused pleaded not guilty to the charges levelled against him. After hearing the learned advocate for the accused and the Ld. A.P.P. for the State the Ld. Addl. Sessions Judge came to the conclusion that the prosecution established beyond reasonable doubt that the accused committed murders of his brother Narbhabhai and his wife Shantaben and convicted him for the offences punishable u/S. 302 of the Indian Penal Code (for short 'IPC') and sentenced him to life imprisonment. He was also directed to pay fine of Rs.500/-, in default to undergo simple imprisonment for a period of six months. The accused has moved this appeal against the said conviction and sentence.

[3. When this appeal came up for final hearing before this Court Mr. J.M. Budhbhatti, Ld. Advocate for the appellant canvassed the cause of the appellant; whereas Ld. A.P.P. Mr. S.P. Dave supported the conviction and sentence. It could be noticed while reading the evidence of the witnesses who were examined before the Ld. Addl. Sessions that they supported the prosecution case as noted above almost on all the facts narrated hereinabove. However, Mr. Budhbhatti, Ld. Advocate submitted that P.W. 1 Manabhai Panabhai, exh. 6, the complainant has

not adhered to the timings which he stated in his examination-in-chief. He deposed that the incident occurred at around 11 O'clock in the forenoon; whereas in the cross-examination he gave timings of about 1 O'clock in the afternoon. On going through the evidence of Manabhai Panabhai it would appear that he has in material respect supported his complaint exh. 19. We need not repeat the facts which have been stated by him both in his complaint as well as in his oral evidence. It would clearly appear that even though he happened to be a near relation, he has come out with the clear version of the facts of the incident which he came across. He has referred to the timing of 11 O'clock by approximation. Being a villager it would be too much to expect from him statement of exact timing after passage of around two years when his evidence was recorded. Such a variation with regard to timing will take the defence neither here nor there. He has identified the weapon of offence as well as the accused.

Dr. Rajesh Vrajlal Shah, P.W. 2, exh. 7 clearly corroborates the events which have been spoken to by the complainant P.W. 1 Manabhai Panabhai exh.6 and eye witness P.W. 3 Ratnabhai Amathabhai, real brother of the accused and deceased, exh. 10. Ratnabhai has spoken to the facts of the incident as aforesaid. It is true that he did not have the occasion to file complaint, but his immediate reaction was to rush to the cousin who was in the vicinity. Reason of rushing to his brother has been explained by saying that he was frightened seeing his one brother killing his wife and also his another brother. It is true that he does not support prosecution in respect of the use of exact words appearing in the complaint exh. 19. But in his cross-examination he has been confronted with his earlier statement in which he did state about the cause of illicit relation stated by the accused when asked by the complainant soon after the time of the incident. It was quite natural for the witness not to immediately react to such a cause in his examination-in-chief. It might be noted that at the time of incident he was studying in 10th standard and his evidence before the Court clearly appears to be quite natural.

It has been submitted that one Bhikhabhai Kalubhai was stated to have accompanied the complainant for going to the police station for lodging the FIR. Referring to the evidence of Investigating Officer Mr. Pathibhai Jethabhai, exh. 18 it has been submitted that no-one accompanied the complainant when the FIR was lodged. Possibility of the hostile witness Bhikhabhai

Kalubhai P.W. 4, exh. 11 remaining outside the police station resulting into the Investigating Officer stating that no one accompanied the complainant cannot be ruled out. However, even if this be treated as a variation between the two pieces of evidence, the same will hardly have any effect of dislodging the prosecution case as appearing in the evidence.]

4. The above being the state of the prosecution evidence, Mr. Budhbhatti, Ld. Advocate for the accused sought to canvass grave and sudden provocation as appearing in exception no. 1 to section 300 of the IPC and to urge before this Court nature of offence as envisaged by section 304 of the IPC. It can be seen from the state of facts concerning the incident noted hereinabove that there was nothing which could be alleged for the accused to have lost his power of self control at the relevant time. Even if he had either suspicion or knowledge of illicit relation between his wife and his brother, both since deceased, he had no immediate cause at the time of such incident which would have an effect of depriving him (the accused) of the power of his self control. On the facts as noted hereinabove this can certainly not be said to be a case of grave and sudden provocation referable to sub-section (1) of section 300 of the IPC. Mr. Budhbhatti's submission giving benefit of Section 300 of the IPC also cannot be accepted.

5. Having gone through the evidence read by the learned advocate fothe accused and having heard him as well as Ld. APP, we are of the opinion that the conviction and sentence rendered by the Ld. Addl. Sessions Judge against the accused cannot be faulted.

In the result, this appeal is required to be dismissed. Order accordingly.

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PVR.